REMARKS/ARGUMENTS

Claims 1-10, 12-37, 39-48, 52-73 and 75-107 are pending in the present application. Claims 1, 22-24, 27, 28, 32, 34, 37, 39, 58-60, 63, 64, 68, 70, 73, 75, 92-94, 97, 98, 102, 104 and 107 have been amended by this Amendment.

Initially, Applicants point out that the amendments to claims are made only to address the Examiner's claim objections and the rejection under 35 USC § 101 in the interests of forwarding prosecution. Applicants' amendments present no new issues requiring further consideration and/or search by the Examiner. They merely adopt the Examiner's suggestions in the final Office Action and remove issues for appeal. Accordingly, Applicants respectfully request entry of the present Amendment after Final.

Telephone discussion

Applicants note the telephone discussion with Examiner Nga Nguyen conducted on August 24, 2009. Applicants discussed with the Examiner the rejection under 35 USC § 101. Applicants appreciate the Examiner's indication that the rejection would be overcome if Applicants amended the claims to tie each method step to the exchange system and to delineate the exchange system as a hardware system, and not a software system alone.

Claim Rejections under 35 USC § 101

Claims 1-10, 12-37, 39-48, 52-73 and 75-107 stand rejected under 35 USC § 101 because the claimed invention is directed to non-statutory subject matter. The Examiner asserts that it is unclear as to whether the "exchange system" recited in Applicants' claims is a software system or a hardware system. The claims have been amended to expressly denote that the exchange system is a

hardware exchange system. The claimed method is therefore tied to a particular machine that is not a software system alone: the hardware exchange system. *In re Bilski* specifically requires a particular machine and the hardware exchange system qualifies as such. In particular, paragraphs [0027] to [0029] of Applicants' published application explain that the exchange system may be any number of computer system hardware configurations including a processor, memory, and modules for performing the functions as claimed. Furthermore, the body of the claims recites the exchange system, which is now clearly delineated as a hardware system. Accordingly, Applicants now request that the rejection under 35 USC § 101 be withdrawn.

Claim Rejections under 35 USC 103

Claims 1-10, 12-37, 39-48, 52-73 and 75-107 stand rejected under 35 USC § 103(a) as unpatentable over Coyle (U.S. Pat. No. 6,269,157) in view of Gros et al. (U.S. Pub. No. 2002/0004788, hereinafter "Gros"). Applicant traverses this rejection.

The asserted combination applied by the Examiner fails to disclose, teach or suggest "tracking, at the exchange system, bandwidth utilization for the selected supplier to ensure that the selected supplier does not provide ***further*** incentive data for data services beyond available bandwidth of the selected supplier", as recited by Applicants' independent claim 1.

The Examiner already acknowledges at page 5 of the Office Action that Coyle fails to disclose these features of Applicants' independent claim 1. Instead, the Examiner relies on Gros as disclosing these features.

However, Gros also fails to disclose "tracking, at the exchange system, bandwidth utilization for the selected supplier ensure that the selected supplier does not provide ***further*** incentive data for data services beyond available bandwidth of the selected supplier", as recited

by Applicants' independent claim 1. Gros is directed to a method of pooling bandwidth between first and second pooling points in a communication system. Tradable bandwidth segments are made available from the pooled bandwidth. A seller then delivers to a buyer bandwidth between the first and second pooling points pursuant to agreed upon terms. (see Abstract of Gros). Paragraph [0038] of Gros discloses that a pooling point administrator 304 is responsible for monitoring the quality of service of delivered bandwidth to ensure that it meets the contracted for terms. Paragraph [0043] of Gros explains that bandwidth traders may have a right to recover liquidated damages from their respective counterparties in the event that the making or taking delivery of bandwidth does not meet prescribed quality of service standards agreed to by the counterparties. Thus, Gros describes monitoring only bandwidth that has already been delivered against previously contracted for terms to ensure that the previously contracted for terms were met. Gros fails to disclose, teach or suggest tracking bandwidth utilization to ensure that a supplier does not provide further incentive data for data services beyond available bandwidth of the selected supplier. That is, Gros does not track bandwidth utilization to ensure that a supplier does not offer further bandwidth that he cannot provide in the future. On the contrary, as is clear from paragraph [0043] of Gros, if incentive data for data services beyond available bandwidth of a selected supplier were proved by the selected supplier in Gros, Gros would merely determine after delivery of the bandwidth that the bandwidth did not meet the prescribed for quality of service standards agreed to by the supplier and a buyer. Thus, Gros merely determines after the fact that delivered bandwidth did not meet contracted for terms or quality standards.

In particular, Gros describes at paragraphs [0083] to [0085] that the delivered bandwidth may be monitored to ensure that the bandwidth is delivered according to the agreed upon terms. Gros further describes at paragraph [0083] that the quality of service manager 408 may be used

to collect and store in a database performance monitoring data related to the quality of service exhibited by the traded for bandwidth segments 112. Gros then discloses at paragraph [0084] that "the performance monitoring database may be used to generate reports which may be compared against the quality of service standards agreed to in connection with the underlying bandwidth trades." Therefore, Gros merely compares reports concerning already delivered data to previously agreed upon quality of service standards. Gros also discloses at paragraph [0085] that "the pooling point administrator may schedule, monitor, and compare the delivered quality of service against the quality of service contracted for by the buyer and seller." Thus, Gros fails to identify or delineate any tracking related to further bandwidth delivery, let alone tracking directed at preventing a seller from promising further bandwidth that he will not be able to provide in the future. Accordingly, Gros fails to disclose, teach or suggest "tracking, at the exchange system, bandwidth utilization for the selected supplier to ensure that the selected supplier does not provide ***further*** incentive data for data services beyond available bandwidth of the selected supplier", as recited by Applicants' independent claim 1. Accordingly, even assuming that there is a reasonable rationale to combine Gros and Coyle, the resulting combination would not render the claims obvious.

Claim 1 is deemed to be patentably distinct over the cited art for at least the foregoing reasons. Claims 39 and 75 contain features akin to those discussed above with respect to claim 1 and, therefore, claims 39 and 75 are likewise deemed to be patentably distinct over the cited art for at least the same reasons discussed above with respect to claim 1. Claims 2-10, 12-37, 40-48, 52-73, and 76-107, which variously depend from one of claims 1, 39 and 75, are deemed to be patentably distinct over the cited art for at least the same reasons discussed above with respect to claims 1, 39 and 75, as well as on their own merits.

In view of the above, Applicants request that the rejection under 35 USC § 103(a) be withdrawn.

CONCLUSION

In view of the foregoing, reconsideration and withdrawal of all rejections, and allowance of all pending claims is respectfully solicited.

Should the Examiner have any comments, questions, suggestions, or objections, the Examiner is respectfully requested to telephone the undersigned in order to facilitate reaching a resolution of any outstanding issues.

It is believed that no fees or charges are required at this time in connection with the present application. However, if any fees or charges are required at this time, they may be charged to our Patent and Trademark Office Deposit Account No. 03-2412.

Respectfully submitted,
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